

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EMMA E. STINCHCOMB

Claimant

VS.

RAYTHEON AIRCRAFT COMPANY

Self-Insured Respondent

AND

WORKERS COMPENSATION FUND

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) Docket Nos. 182,154 & 227,684

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ORDER

Claimant appealed the November 4, 2003, Review & Modification Award entered by Administrative Law Judge Bruce E. Moore. At the parties' request, the Board removed this appeal from its oral argument docket to its summary docket for disposition without oral argument.

APPEARANCES

Roger A. Riedmiller of Wichita, Kansas, appeared for claimant. Terry J. Torline of Wichita, Kansas, appeared for respondent. And David G. Shriver of McPherson, Kansas, appeared for the Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Review & Modification Award.

ISSUES

In Docket No. 182,154, claimant was awarded permanent partial general disability benefits for a 24 percent whole body functional impairment arising from a January 1, 1993, accident. In Docket No. 227,684, claimant was awarded permanent disability benefits for a scheduled injury based upon a 10 percent functional impairment to the left upper extremity, which arose from a May 5, 1997, accident. After those awards were entered, respondent placed claimant on leave effective July 24, 2002, as respondent was unable

to continue accommodating claimant's work-related injuries and restrictions. Consequently, claimant filed requests to review and modify both of her awards.

The only issues presented in this appeal are:

(1) Whether an award granting claimant permanent partial general disability benefits can be modified to increase claimant's permanent partial general disability when 415 weeks have transpired following a January 1, 1993, accident.

(2) Whether an award for a scheduled injury should be modified when claimant does not allege an increase in functional impairment.

(3) If either award can or should be modified, what is the nature and extent of claimant's present disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the parties' arguments, the Board finds and concludes that the November 4, 2003, Review & Modification Award, which denied claimant's requests to modify the earlier awards, should be affirmed.

In Docket No. 182,154, the parties entered into an agreed award in which claimant was awarded permanent partial general disability benefits for a 24 percent whole body functional impairment.¹ The parties also stipulated the date of accident for that claim was January 1, 1993. That award was dated January 30, 1998.

Likewise, in Docket No. 227,684, the parties entered into an agreed award in which claimant was awarded scheduled permanent disability benefits for a 10 percent permanent disability to the left arm.² That award was entered March 18, 1999.

For a January 1993 accident, the Workers Compensation Act provides that only 415 weeks of benefits are payable for temporary and permanent partial general disability benefits. K.S.A. 1992 Supp. 44-510e(a) provides, in part:

If the employer and the employee are unable to agree upon the amount of compensation to be paid in the case of injury not covered by the schedule in K.S.A. 44-510d and amendments thereto, the amount of compensation shall be settled according to the provisions of the workers compensation act as in other cases of

¹ See K.S.A. 1992 Supp. 44-510e.

² See K.S.A. 1996 Supp. 44-510d.

disagreement, except that in case of temporary or permanent partial general disability not covered by such schedule, **the employee shall receive weekly compensation as determined in this subsection during such period of temporary or permanent partial general disability not exceeding a maximum of 415 weeks. . . . In any case of permanent partial disability under this section, the employee shall be paid compensation for not to exceed 415 weeks following the date of such injury, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto.** (Emphasis added.)

The review and modification statute, K.S.A. 1992 Supp. 44-528, does not address the length of the period that an injured worker is entitled to receive workers compensation benefits.

The Judge determined the 415-week period following claimant's January 1, 1993, accident expired on December 15, 2000. And claimant's employment status changed in July 2002. Accordingly, the Judge determined claimant could not modify her January 1998 agreed award. The Board agrees. The Board concludes Judge Moore correctly interpreted K.S.A. 1992 Supp. 44-510e and, consequently, the Board agrees claimant was limited to the 415 weeks of temporary and permanent partial disability benefits that claimant has received.

In her brief to the Board, claimant does not contend the Judge erred in denying her request to modify the agreed award for the scheduled left arm injury in Docket No. 227,684. Consequently, the Board will not address that claim but, instead, the Board adopts the Judge's analysis.

The Board adopts the findings and conclusions set forth in the November 4, 2003, Review & Modification Award that are not inconsistent with the above. Consequently, the Board denies claimant's requests to modify the January 30, 1998, and the March 18, 1999, awards.

AWARD

WHEREFORE, the Board affirms the November 4, 2003, Review & Modification Award.

IT IS SO ORDERED.

Dated this ____ day of April 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Terry J. Torline, Attorney for Respondent
David G. Shriver, Attorney for Fund
Nelsonna Potts Barnes,³ Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ These claims are now assigned to Judge Barnes.